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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,034	11/28/2001	Jens Grieswald	7123 US	1255
66638	7590	08/19/2008	EXAMINER	
MICHAEL A. NELSON			HOM, SHICK C	
TEKTRONIX, INC.				
14150 SW KARL BRAUN DRIVE			ART UNIT	PAPER NUMBER
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			08/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/997,034	GRIESWALD, JENS	
	Examiner	Art Unit	
	SHICK C. HOM	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 June 2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 6/3/08 have been fully considered but they are not persuasive. In pages 4 and 5 of the remarks, applicant argued that Chang only teaches communication via the link layer and not any layer is not persuasive because the abstract which recite the PHY-emulation module permitting data transmission between two internal link layers without the intervening physical layer thereby providing each internal link layer with a corresponding "virtual" PHY layer clearly reads on the test apparatus communicate directly with any layer that is higher than a first layer of the functional layers without the communication previously having to pass through the first layer as in claims 1 and 6; further Parker in Fig. 7 shows the PSGF, i.e. the test apparatus, communicating directly with any of the device layer, session layer, and application layer clearly anticipate communicating directly with any layer that is higher than a first layer as argued.

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2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (5,822,520) in view of Chang (6,327,637).

Regarding claims 1 and 6:

Parker discloses a circuit for testing a communication system that is subdivided into functional layers comprises a port that allows communication by a test apparatus (the abstract recite the packet shell generation facility PSGF generating test packets for testing network protocol device; and Figs. 6-9 show the test circuit).

Regarding claim 2:

Parker discloses wherein the functional layers correspond to an OSI reference model (col. 1 lines 43-64 recite the use of the OSI reference model).

Regarding claim 3:

Parker discloses wherein the communication comprises data input into and/or data output from the port (Fig. 9 shows and col. 5 line 66 to col. 6 line 8 recite that each layers being in bidirectional communication with the kernel of the local computer).

Regarding claims 7-10:

Parker discloses the step of inputting test data which is a stimulation signal, into the port before the outputting step; and wherein the response data, is a monitoring signal, comprise a response to the stimulation signal (col. 2 lines 47-65 recite test packet being generated to simulate the network communication reads on the stimulation signal and col. 9 lines 46-56 recite the effect of the test packets being monitored and evaluated so that the effects of the specific layers can be evaluated reads on the output of the response data).

Parker discloses all the subject matter of the claimed invention with the exception of whereby the test apparatus communicate directly with any layer that is higher than a first layer of the functional layers without the communication previously having to pass through the first layer as in claims 1 and 6.

Chang from the same or similar fields of endeavor teach that it is known to provide whereby the test apparatus communicate directly with any layer that is higher than a first layer of the functional layers without the communication previously having to pass through the first layer (the abstract recite the logic for devices to communicate with each other without an intervening physical layer thereby eliminating the connection to the physical layer in a system having multiple layers as in claims 1 and 6).

Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide whereby the test apparatus communicate directly with any layer that is higher than a first layer of the functional layers without the communication previously having to pass through the first layer as taught by Chang in the circuit and method for testing communication system of Parker.

The apparatus that communicate directly with any layer that is higher than a first layer of the functional layers without the communication previously having to pass through the first layer can be implemented by connecting the logic and interface for communicating directly with any layer that is higher than a first layer of the functional layers without the communication

previously having to pass through the first layer of Chang to the test apparatus of Parker.

The motivation for connecting the logic and interface for communicating directly with any layer that is higher than a first layer of the functional layers without the communication previously having to pass through the first layer as taught by Chang to the test apparatus of Parker being that it provides more efficiency for the test apparatus since the direct communicate, i.e. without the communication previously having to pass through the first layer, would increase the bandwidth of the interface attached to the apparatus.

5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (5,822,520) and Chang (6,327,637) in view of Warren (6,381,721).

Regarding claims 4 and 5:

For claims 4 and 5, Parker and Chang disclose the circuit arrangement described in paragraph 4 of this office action. For claims 4 and 5, Parker and Chang disclose all the subject matter of the claimed invention with the exception of wherein the processing of the communication is realized on a single chip, with the port being provided on the chip as recited in claim 4

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and wherein the processing of the communication is realized on a first chip and the port on a second chip, the first and second chips being linked with each other for data transfer as recited in claim 5.

Warren from the same or similar fields of endeavor teach that it is known to provide the processing of the communication is realized on a single chip, with the port being provided on the chip (see col. 1 lines 55-67) and wherein the processing of the communication is realized on a first chip and the port on a second chip, the first and second chips being linked with each other for data transfer (see col. 3 line 43 to col. 4 line 16 and the first and second chip in claim 9).

Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide the processing of the communication being realized on a single chip, with the port being provided on the chip and the processing of the communication being realized on a first chip and the port on a second chip, the first and second chips being linked with each other for data transfer as taught by Warren in the circuit arrangement of Parker and Chang.

The motivation for providing the processing of the communication being realized on a single chip, with the port being provided on the chip and the processing of the

communication being realized on a first chip and the port on a second chip, the first and second chips being linked with each other for data transfer as taught by Warren in the circuit arrangement of Parker and Chang being that it provides the desirable added feature of integrated circuit technology to the circuit arrangement of Parker and Chang.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cheng et al. disclose an automatic test environment for communications protocol software. Col. 4 line 58 to col. 5 line 11 recite the test system interacting directly with the implementation under test, IUT, rather than via upper or lower layer communication protocol software.

Voit et al. disclose congestion and throughput visibility and isolation. Col. 28 line 62 to col. 29 line 6 recite a technique for monitoring and testing of the elements of the ADN network; which entails isolation of communication through segments of the network and visibility of communications on each isolated segment at protocol layers at or above the layer 2 protocol used to define the customer's connectivity.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHICK C. HOM whose telephone number is (571)272-3173. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pham Chi can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chi H Pham/
Supervisory Patent
Examiner, Art Unit 2616
8/18/08

SH